

Minutes of the  
Board of Minerals and Environment Meeting  
Matthew Environmental Education and Training Center  
523 East Capitol Avenue  
Pierre, South Dakota

October 16, 2008  
10:00 a.m. CDT

CALL TO ORDER AND ROLL CALL: The meeting was called to order by Chairman Richard Sweetman. Secretary Linda Hilde noted that a quorum was present.

BOARD MEMBERS PRESENT: Richard Sweetman, Lee McCahren, Linda Hilde, Glenn Blumhardt, and Bob Duxbury.

BOARD MEMBERS ABSENT: Mike DeMersseman, Dennis Landguth, Peter Bullene, and Chuck Monson.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM SEPTEMBER 18 AND SEPTEMBER 24-26, 2008, MEETINGS: Motion by Hilde, seconded by Blumhardt, to approve the minutes from the September 18, 2008, and September 24-26, 2008, Board of Minerals and Environment meetings. Motion carried.

MINING ISSUES: Eric Holm was administered the oath by Lee McCahren. He presented the matrix sheet (see attachment) listing the DENR recommendations for transfers of liability, transfer of liability and release of surety, releases of liability and surety, and releases of liability.

Motion by Blumhardt, seconded by Hilde, to accept the DENR recommendations as shown on the matrix sheet. Motion carried.

Wharf Reclamation Bond Increase: Mr. Holm reported that this summer, the department approved a technical revision that allows Wharf Resources to construct a new leach pad (Pad 5) located to the southwest of Pad 3. Construction of the new leach pad is almost complete. About 38 acres of new contiguous affected land have been affected by construction of the leach pad. The new pad will have capacity for about 5.3 million tons of ore, to be processed from 2008 to 2011. The lining system consists of 30 mil geosynthetic clay liner (composite bottom liner); 50 mil LLDPE Super Gripnet liner (combination secondary liner and drain net leak detection system); and 80 mil LLDPE primary liner.

Wharf was required to submit additional reclamation bond in the amount of \$1,157,000 for Pad 5.

On May 14, 2008, Wharf submitted \$200,000 in the form of a Certificate of Deposit for the first phase of the project. On October 9, 2008, Wharf submitted an amendment to its current letter of credit increasing the amount of the letter of credit by \$1,157,000, which is the total bond amount required for Pad 5. The total amount of the letter of credit will increase to \$12,331,422.

Wharf requested that the board release the \$200,000 Certificate of Deposit submitted in May, since the total bond for Pad 5 is now covered under the letter of credit.

The department recommended that the board accept the \$1,157,000 increase to Letter of Credit No. S18572/191556 and release CD No. 40133204 in the amount of \$200,000.

Motion by Duxbury, seconded by Hilde, to release CD No. 40133204, First Western Bank, Deadwood, in the amount of \$200,000, and to accept the increase to Letter of Credit No. S18572/191556, for Wharf Resources, (USA), Inc., Lead SD, Mine Permit No. 356. Motion carried.

OIL & GAS CASE NO. 20-2008 – ZENERGY OPERATING COMPANY, LLC: Chairman Sweetman requested a motion from the board appointing Lee McCahren as hearing chairman.

Motion by Duxbury, seconded by Hilde, to appoint Mr. McCahren as hearing chairman. Motion carried.

Mr. McCahren opened the hearing at 10:10 a.m.

Lawrence Bender, attorney from Bismarck, ND, represented Zenergy Operating Company, LLC.

Roxanne Giedd, Deputy Attorney General, represented the Department of Environment and Natural Resources (DENR).

Case No. 20-2008, is the application of Zenergy Operating Company, LLC for an Order extending the field boundaries and amending the field rules for the Bull Creek Field or any other field orders or spacing rules to create and establish four 1280-acre spacing units comprised of Section 36, T21N, R5E and Section 31, T21N, R6E; Section 25, T21N, R5E and Section 30, T21N, R6E; Sections 5 and 6, T20N, R6E; and the E/2 of Section 23, T21N, R5E; all of Section 24, T21N, R5E; and the W/2 of Section 19, T21N, R6E, Harding County, South Dakota, and authorizing the drilling of a horizontal well to the "B" Zone of the Red River Formation within each spacing unit.

Witnesses administered the oath and testifying on behalf of Zenergy Operating Company, LLC:

Micah Cotten, landman  
Thomas Arthur, geologist

Exhibits offered and admitted into the record for Zenergy Operating Company, LLC:

- Exhibit 1 – Regional spacing map
- Exhibit 2 – Proposed 1,280-acre spacing units
- Exhibit 3 – Land plat, T21N, R5E, Section 36; T21N, R6E, Section 31
- Exhibit 4 – Ownership summary, T21N, R5E of Section 36, T21N, R6E, Section 31
- Exhibit 5 – Land plat, T21N, R5E of Section 25, T21N, R6E, Section 30
- Exhibit 6 – Ownership summary, T21N, R5E of Section 25, T21N, R6E, Section 30
- Exhibit 7 – Land plat, T20N, R6E, all of Sections 5 and 6
- Exhibit 8 – Ownership summary, T20N, R6E, all of Sections 5 and 6
- Exhibit 9 – Land plat, T21N, R5E, E1/2 Section 23 and all of Section 24, T21N, R6E, W1/2 of Section 19
- Exhibit 10 – Ownership Summary, T21N, R5E, E1/2 of Section 23 and all of Section 24, T21N, R6E, W1/2 of Section 19
- Exhibit 11 – Structural map showing proposed 1,280-acre spacing units
- Exhibit 12 – Neutron density logs for Luff 2-24 Brown and Kirkwood 11-25 Brown
- Exhibit 13 – Borehole schematic
- Exhibit 14 – Reserves and economic estimates

Fred Steece, DENR Oil and Gas Supervisor, was administered the oath and testified on behalf of the Department of Environment and Natural Resources regarding Case No. 20-2008.

Notice of the hearing was published twice on or before September 17, 2008, in the Black Hills Pioneer, the Pierre Capital Journal, the Rapid City Journal, and the Nation's Center News. Affidavits of Publication are on file at the Department of Environment and Natural Resources office in Rapid City.

Mr. Steece reported that the department received no petitions to intervene in any of these cases. He did receive some general interest questions from area landowners.

Motion by Hilde, seconded by Blumhardt, to approve Case No. 20-2008, Zenergy Operating Company, LLC. Motion carried.

John Brown, landowner and royalty owner, and Mary Jo Joens, School and Public Lands, offered comments on the application.

Motion by Sweetman, seconded by Duxbury, to adopt the Findings of Fact, Conclusions of Law, and Order for Case No. 20-2008, Zenergy Operating Company, LLC, and to authorize Mr. McCahren to execute the Order. Motion carried.

Mr. McCahren declared the hearing closed.

#### OTHER BUSINESS

Draft Generic Environmental Impact Statement: Mike Cepak reported that the Nuclear Regulatory Commission (NRC) has issued a Draft Generic Environmental Impact Statement

(EIS) that identifies and evaluates the potential environmental impacts from the construction, operation, aquifer restoration, and decommissioning at in-situ leach uranium milling facilities located in the states of Wyoming, South Dakota, Nebraska, and New Mexico.

The Draft Generic EIS addresses environmental issues common to in-situ leach mine milling facilities to aid in making more efficient environmental reviews of individual site-specific in-situ leach mine license applications.

Mr. Cepak noted that the NRC scheduled a series of public meetings in the four states where in-situ leach mine operations are proposed. In South Dakota, the public meeting was held August 25, 2008, in Spearfish.

The draft generic EIS is available through the Nuclear Regulatory Commission's public electronic reading room on the internet.

Next Board Meeting: The next Board of Minerals and Environment meeting is November 19-20, 2008, in Pierre.

Hyperion Resources LLC: Roxanne Giedd stated that the draft Prevention of Significant Deterioration (PSD) air quality permit for Hyperion Resources LLC was public noticed on or about September 12, 2008.

A person wishing to request a contested case hearing may do so from the time the draft permit is public noticed to the end of the public comment period. The public comment period would normally be 30 days, but the DENR Secretary extended the comment period to November 14, 2008. By regulation, the department has 30 days after the comment deadline to respond to the comments and issue the final proposed permit, then the second 30-day time period to petition for a contested case hearing runs. The deadline to file a petition for a contested case hearing is January 18, 2008.

Ms. Giedd presented a draft notice of:

1. Filing of petition for contested case hearing
2. Description of hearing process
3. Notice of public comment meeting at date to be determined
4. Requirement for persons desiring to participate as parties to file motion to intervene or petition for contested case
5. Prehearing conference
6. Contested case hearing at date to be determined
7. Appointment of hearing chair
8. Requirement that corporations, associations, and similar entities be represented by an attorney
9. Establishment of case heading
10. Pleadings filing procedure, and
11. Current party service list

Ms. Giedd stated that the notice will be published in local newspapers. It will also be available on DENR's website and sent to the known parties, which include DENR, Hyperion, Save Union County, Citizens Opposed to Oil Pollution, and the Sierra Club.

Motion by Hilde, seconded by Duxbury, to appoint Lee McCahren as hearing chairman for the Hyperion Resources LLC permit application hearing. Motion carried.

ADJOURNMENT: Chairman Sweetman declared the meeting adjourned.

Linda Hilde 11-18-08  
Secretary Date

Chomera 11-18-08  
Witness Date

# South Dakota Board of Minerals & Environment

October 16, 2008

<u>License/Permit Holder</u>	<u>License/Permit</u>	<u>Site No.</u>	<u>Surety Amt.</u>	<u>Surety No.</u>	<u>Surety Company/Bank</u>	<u>DENR Recommendation</u>
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## Releases of Liability & Surety:

W. Hodgman & Sons, Inc. Wayzata, MN	94-520		\$20,000	0375103540987	Travelers Casualty & Surety Company of America	Release liability and \$20,000.
		<b>520001</b>	NW1/4 Section 8;	T94N-R57W,	Yankton County	
		<b>520005</b>	NE1/4 Section 24;	T102N-R48W,	Minnehaha County	
		<b>520006</b>	SE1/4 Section 7;	T94N-R57W,	Yankton County	
Terry Weickum Wewela, SD	96-605		\$500	300720	First Fidelity Bank, Colome	Release liability and \$1,500.
			\$500	301085	First Fidelity Bank, Colome	
			\$500	301086	First Fidelity Bank, Colome	
		<b>605002</b>	Section 11;	T95N-R76W,	Tripp County	

## Transfer of Liability:

Quality Real Estate, Inc. Hot Springs, SD	91-421		\$5,000	1000797799	American Contractors Indemnity Company	Transfer liability.
		<b>421008</b>	SE1/4 NE1/4 E1/2 SW1/4 & SE1/4 NW1/4 Section 10;	T8S-R6E,	Fall River County	
Transfer to:			EXEMPT	NA	NA	
City of Hot Springs Hot Springs, SD	83-252					

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**Transfers of Liability:**

Terry Weickum Wewela, SD	96-605		\$500 \$500 \$500	300720 301085 301086	First Fidelity Bank, Colome First Fidelity Bank, Colome First Fidelity Bank, Colome	Transfer liability.
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**605001** S1/2 Section 13; T95N-R76W, Tripp County

Transfer to:

Hartland Farms Inc. Ainsworth, NE	08-852		\$4,000	0200080248	First National Bank, Ainsworth	
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Clark County Highway Department Clark, SD	83-150		EXEMPT	NA	NA	Transfer liability.
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**150011** NW1/4 Section 31; T117N-R57W, Clark County

Transfer to:

Clausen Construction, Inc. Watertown, SD	83-15		\$2,500 \$2,500	58059819 7900588314	Western Surety Company Nationwide Mutual Insurance Company	
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Clark County Highway Department Clark, SD	83-150		EXEMPT	NA	NA	Transfer liability.
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**150020** NW1/4 Section 12; T119N-R59W, Clark County

Transfer to:

Bawek Construction Conde, SD	83-121		\$2,000 \$18,000	10034 10550	Bank of Hoven, Hoven Bank of Hoven, Hoven	
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<u>License/Permit Holder</u>	<u>License/Permit</u>	<u>Site No.</u>	<u>Surety Amt.</u>	<u>Surety No.</u>	<u>Surety Company/Bank</u>	<u>DENR Recommendation</u>
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**Releases of Liability:**

Higman Sand & Gravel, Inc. Akron, IA	83-213	213005	\$20,000	975 7820	Fidelity & Deposit Company of Maryland SW1/4 NE1/4 & SE1/4 NW1/4 Section 19; T92N-R49W, Union County	Release liability.
Wayne Malsam Ipswich, SD	97-606	606007	\$1,000	14246	First National Bank, Pierre SW1/4 Section 23; T125N-R72W, McPherson County	Release liability.
Missouri Valley Materials, Inc. Akron, IA	92-466	466002	\$20,000	3056 35 78	Fidelity & Deposit Company of Maryland S1/2 SE1/4 Section 24 & N1/2 NE1/4 Section 25; T92N-R50W, Union County	Release liability.
Rechnagel Construction, Inc. Hurley, SD	83-135	135020	\$20,000	55-122632	United Fire & Casualty Company SW1/4 Section 24; T98N-R53W, Turner County	Release liability.
Spencer Quarries, Inc. Spencer, SD	83-36	36004	\$20,000	55-194360	United Fire & Casualty Company NE1/4 Section 32; T104N-R61W, Davison County	Release liability.
		36010			NE1/4 Section 7; T107N-R55W, Miner County	

**Releases of Liability:**



October 16, 2008

License/Permit Holder   License/   Site No.   Surety Amt.   Surety No.   Surety Company/Bank   DENR Recommendation  
Permit

**Releases of Liability:**

Butte County Highway  
Department  
Belle Fourche, SD

83-6

EXEMPT

NA

NA

Release liability.

**6003**   Section 8; T8N-R3E, Butte County

**Surety Increase & Exchange of Surety:**

Wharf Resources (USA), Inc.  
Lead, SD

356

\$11,174,422

ILOC No.  
S18572/191556

ScotiaBank, Ontario Canada

Wharf is increasing their Letter of Credit to \$12,331,422 and asking for the release of CD No. 40133204, First Western Bank, Deadwood, in the amount of \$200,000. Recommendation is to accept the increase to Letter of Credit No. S18572/191556 and release CD No. 40133204 in the amount of \$200,000.

## ATTENDANCE SHEET

## BOARD OF MINERALS AND ENVIRONMENT MEETING

Location Matthew Training Center  
PierreDate 10-16-08

NAME (PLEASE PRINT)

ADDRESS

REPRESENTING

Vaughan BakerBismarck NDZenergyThomas ArthurDenver COZenergyMicah CottenBismarck, NDZenergyEric HolmPierreDENIRFRED STEELER.C.DENRMike CepakPierreDENRJohn BrownPierreselfn. J. JonesPierreS.P.L.